IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA.
CASE NO.: 95-01820-CA

DANA RAULERSON, as Personal Representative of the Estate of JEAN CONNOR, Deceased,

Plaintiff,

vs.

R.J. REYNOLDS TOBACCO COMPANY, etc., et al.,

Defendants.

Proceedings before the Honorable Bernard Nachman, Circuit Judge, on Friday, May 2, 1997, at 9:00 a.m., in chambers and Courtroom 2, Duval County Courthouse, Jacksonville, Florida, before Diane Connelly, Deborah Pacetti, Shelli Kozachenko, Terrie Cook, Allison Pauline, Registered Professional Reporters, and a Notary Publics in and for the State of Florida at Large.

APPEARANCES:
RON MOTLEY, Esquire, NORWOOD S. WILNER, Esquire, GREGORY H. MAXWELL, Esquire, Attorneys for Plaintiff.
PAUL G. CRIST, Esquire, STEVEN A. WERBER, Esquire, JIM JOHNSON, Esquire, and DIANNE PULLEY, Esquire, Attorneys for Defendant.

MR. WILNER: It's Exhibit 22, 39, 44, 46, and 48.
THE COURT: Those were withdrawn?
MR. WILNER: By agreement they've been withdrawn.
MR. CRIST: Your Honor, I think ought to be treated as exhibits marked for identification.
MR. WILNER: Sure. We agree.
THE COURT: All right. So it's something someone can look at and say --
MR. CRIST: Sure.
THE COURT: Ready?
MR. WILNER: Yes, Your Honor.
THE COURT: Recall the jury.
(The following proceedings were held in the presence of the jury:)
THE COURT: Members of the jury, at this time all of the evidence that you are to consider has been received and the attorneys, again, have an opportunity to address you and to make their final arguments.
The arguments that they now make are not to be considered by you either as evidence in the case or as your instructions on the law. Nevertheless, these arguments are intended to help you properly

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understand the issues, the evidence and the applicable law, so you should give them your close attention.

Mr. Motley.

MR. WILNER: Mr. Wilner, thank you.

THE COURT: Mr. Wilner.

MR. WILNER: That's all right. It's all right.

Good morning, and it's a pleasure to talk to you directly. I'm going to be addressing you for about 45 minutes and then my partner Mr. Motley will do the same, and then Mr. Crist and the attorneys for R.J. Reynolds will address you, and then we may have some things to say in response to that, but we're all going to be out of here today as early as we can. We appreciate your time.

Always before a big argument my -- I have case of the voice, so I apologize if I don't sound particularly clear, but it always happens at the time I have to use it.

This is a time that is a little different from the rest of the case because this case has gone along and you've been exposed to it and it has a lot of formalities to it. The formalities are you can't ask questions, we can't address you directly,

we can't stand up and say, Wait a minute, what we really mean is this.

It's done in a formal proceeding. His Honor, Judge Nachman, rules on what happens and that's the way that its been designed to happen. That's the kind of system we have. There are little gaps in that and that is -- and they are in the opening statement and the final argument where we can address you directly and try to put things together.

One of the troubles is there isn't enough time to do it. It's -- we've been here four weeks and if I were to recount all the evidence to you we'd be here another week. We're not going to do that.

So much of what I say will be summary in nature. It's not because I don't think the evidence that you saw was important. That's what you have to rely on, but it's because I want to try it put it together in a way because there are some things that come out during trial that, frankly, some of it makes sense and some of it doesn't, and I think it's up to you to decide what does make sense and what doesn't.

Well, anyway, in order to make sense out of this whole thing I want to start where -- I'm going

to start at the end, sort of what I did at the opening statement, and put the verdict -- show you the verdict, what you'll be asked to fill out at the end of the case. Could we start with that.

There are lots of things that we can think about in this case and we'll talk about some philosophical questions in a little bit, but when it gets all down to it, this is the verdict that

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you will be asked to fill out. His Honor will instruct you about the law and then we'll ask you to retire, elect a foreperson, and fill out the verdict, and so I guess we should start, perhaps, at what that is and what that means.

It says, We the jury return the following verdict: Was there negligence on the part of Defendant R.J. Reynolds Tobacco Company which was a legal cause of the death of the decedent, Jean Connor? So right away you think, Well, what does that mean and what is negligence and what is legal cause, and I hope to provide some guidance in the next few minutes.

The next question is: Were the cigarettes manufactured by Defendant R.J. Reynolds Tobacco Company unreasonably dangerous and defective and a legal cause of the death of the decedent? So it

talks about the cigarettes, in our case, Winston and Salem.

It says: Are they unreasonably dangerous and defective, and that same word legal cause. I'll -- so those are the questions -- those are the things I'll be talking about.

It says: If your answer to questions one and two is no, your verdict is for the defendant R.J. Reynolds, and you don't do anything else. If it's yes to either one, and we strongly suggest that both of those should be answered yes, then you proceed to the remainder of the form.

The third question is kind of an odd question and it says, Did decedent, Jean Connor, know or should she have reasonably known of her claimed injuries on or before March 29th, 1991? Well, you wonder, Well, what does that got to do with this case?

Well, you have four years to file a lawsuit after you know or should have known -- know about your injuries, so in a way it's kind of a formal thing that goes on the verdict form. In this case she was diagnosed with lung cancer in '93. I don't know, I suggest that that's -- that's not a very hard one. We can come back to that if anyone has

any questions.

But the next page then -- and if you answer -- if you answer number three that she should -- that she should have known of her injuries before March 29th, then your verdict is for R.J. Reynolds because that would mean that she waited too long to file a case. A little confusing. But if she should -- if you answer no, it means that she filed her case on time, and it seems obvious that she did because she was diagnosed with lung cancer in 1993, filed her case in March of '95, so that's only two years. And some of these formalities are a little bit cumbersome, I agree.

But anyway, the next page are questions of damages that you would reach should you have a verdict in favor of the plaintiff, Jean Connor and her estate, and Mr. Motley will be talking about

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those in -- in his argument.
So let's go back to page one. What I want to talk about is page one, and that is, whether you should return a verdict for the plaintiff, Jean Connor and the estate of Jean Connor in this case and whether you should find, as we feel you should, on questions one and two, negligence and legal cause and unreasonably dangerous and defective

product and legal cause. So what I'm going to do in the next few minutes is try to fill in what we think that means and what the evidence showed on those points.
Verdict. The interesting thing you might note from this is that Jean Connor is not on trial in this case, and that's what we said on opening statement. Despite what you may feel have been things that you could have thought or things -- remarks people have said, Jean Connor's conduct is not an element to be decided in the verdict. She's not considered to be negligent. She's a consumer under the law buying a legal product, she's not considered to be negligent. There's no claim that she's negligent.
One can speculate about whether people should or should not smoke, but that is not an issue that you'll see on the verdict form and it's not an issue that is being asked to you today.
The legal system functions and the civil legal system functions by asking specific questions. And if we were the legislature or the government or something, maybe we could decide some of the bigger issues, like whether cigarettes should be banned or people shouldn't smoke or advertisements should be

or not, I don't know. Those are not questions that we have to solve today.
But while I mention that, I would say that as you see today, lots of people are interested in this case besides us and that's well and good that that has happened, but that should not deter you, it should not change what you do.
This is a big case in many respects. We're asking you to send a message in this case. There are punitive damages sought. We're asking you to send a message to R.J. Reynolds and certainly many people will hear that message.
But we want to make sure that you understand that it is not too big of a case and it is well and proper that you are sitting where you are to decide these questions that have been agreed by the law, by the judge to be asked of you. No more. Not to decide the great world of things, but not to shrink from deciding these questions just because they may have a significant impact on other things, and they will certainly have an significant impact on everyone in this courtroom and maybe beyond and that's okay. So we ask you to consider that.
But interesting, Jean Connor is not on trial. She bought and used a product that was put on the

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product by the defendant. She used the product as expected. She did not misuse the product. There's no claim that she misused it. There's no claim that she smoked too many or that she smoked too early in the day or that she smoked the wrong brand or that -- or anything. All of these things were put out there for her and she did exactly what was expected of her.

She died, we will submit, from cancer caused by the product. We will prove, we believe we have proved, that she died from cancer caused by the product that was put on the market by R.J. Reynolds intending her to do just what she said, to smoke the product, to use it, never telling her she should not use more than a certain amount, never telling her she shouldn't use it, expecting her to use it.

Now, you know, you might hear someone say, Well, listen, hey, nobody put a gun to her head, nobody made her smoke. I mean, come, come on, Mr. Wilner, nobody made Jean Connor do it. The human will is free, right? And we agree, the human will is free, that's a very good philosophical issue that we may debate in parlor conversation for years. No one's ever solved that problem.

The human will is free, but the human will is not unaffected by things, and the human will is affected by what's happening inside your brain, by the chemicals that are in it, it's affected by what you see around you, it's affected by the information you have. All of these go into what makes a person do something.

And we're not here to try and say that people become robots when they smoke, because they don't. We're hear to say that the chemicals inside cigarettes do exert an influence on them, they exert an influence, as do the uncertainty that they may perceive about the hazards, as do what is happening around them, as do the advertisements, as do everything. They all go into why humans do what they do, and it's really a mystery why people do what they do. I guess, ultimately, that's why people are people. We're not saying Jean Connor was not a person, she was.

And she was responsible in the sense that all people are responsible for what they do. And we stand here today and we face you and we say, We -- we agree. We're not trying to make Jean Connor into either a robot or a saint. She is a frail -- or was a frail human being. She did what she did

and she died prematurely, and it wasn't right, but she's not a saint.

And she stands through us, she can no longer stand before you, but she stands through us to say that she's not a saint, that she accepts whatever responsibility you feel you ought to assign to her, whatever you feel. It's not on the verdict form to blame her, but whatever's in your mind, she does

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not shrink from that. This -- it's well and proper.

There has been one party that is on the verdict form that has not stood up to take its responsibility. I'll return to that. Jean Connor is here through me to take them, to take them. There hasn't been -- I haven't heard anything from the other side about that, about them taking their responsibility.

So they say, Well, Mr. Wilner, no one made -- no one put a gun to her head, and I say, Yes, humans do things, they do. And, in fact, if someone did put a gun to her head and make her smoke, this wouldn't be a civil trial, it would be a murder trial. If someone put a gun to her head and made her smoke, it would be a murder trial.

This is a civil trial of a legally available

civil product and that's why where here, we seek a civil fine and compensation, not imprisonment. And we're also operating under the preponderance of the evidence standard, not some artificially high standard that you might find in a criminal case. We're operating on probabilities, because we only seek a civil fine and we only seek compensation, not imprisonment.

So, yes, no one put a gun to Ms. Connor's head, but no one put a gun to R.J. Reynolds' corporate head either and made them manufacture and sell cigarettes at a profit. No one made them do that either. So when someone says, Look, isn't it their personal freedom and personal choice, and our answer is, Oh, you bet you, 100 percent. We -- we assert and stand up proud and say, We want personal responsibility, we want choice, we want -- we accept it, we live by it. But it's a two-way street; it goes the other way too.

What about Reynolds' personal responsibility? What about their choice? They had the same choices to make. They chose to get in the business. They chose to sell the product. They made a series of choices that we'll outline when we have a moment that were fatal choices to Jean Connor. They chose

throughout the conduct that we'll -- that we'll outline here during the time that Jean Connor was using their product, from of '61 to '84 and before, they chose, and it sounds trite but it's so true, profits over their people.

And when we get done looking at some of their documents again -- and you'll have them, incidentally, when you go back to the jury room, you'll be able to look at them, not quite as long as you'd like, but as long as you reasonably need.

I want you, when you look at these, to consider very carefully where the evidence is that R.J. Reynolds cared about anybody about itself. I want you to look through the documents that R.J. Reynolds has put into evidence as well as the documents that we have and I want you to see if you can find references inside of R.J. Reynolds where

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someone came up and said, Wait a minute, what about the health, the safety of our consumers, of our public? How important is this to us? What are we willing to do to risk it?

We're a free company. This is a great country we're in. We're allowed to sell products, we're allowed to be in corporate form. R.J. Reynolds is legal, it's allowed to be in a big corporation and

sell these products, but it has to have a conscience or else juries like you can be presented these cases, that is the way that the corporate conscience is controlled, not by Washington, but by Jacksonville in this case.

And so it's a tradeoff. If you want to be -- to operate in the free market without -- without restraint, and that is basically what has been the case in cigarettes, if you want to operate in the free market, it's fine, the government may not stop you. You can't say the government made -- didn't make you do it either, but the government may not stop you, but you have to stand trial in front of juries on civil liability cases, that question, whether you used reasonable care. That's all, and that's why we're here, and that connects it back up to the verdict form; a little digression.

Okay. So let's go back for a moment to the verdict form. At this rate, I'm going to get done by three pages out of my outline and then I'll be done, all right, but it's important.

Okay. Let's go back to the verdict. Remember, page one: Was there negligence? So you say, Mr. Wilner, what does that mean? You lawyers use these -- use these terms, I don't know what

they are.

Go to negligence plate five, please, Ginny. So boil it all down, negligence is a failure to use reasonable care. His Honor, Judge Nachman, will instruct you on negligence. You are to follow his instructions to the letter. It is, when all is said and done, something that is uniquely human to quantify.

It is the -- it is the failure to use reasonable care under the circumstances, and we -- in this great country we can apply the standard to manufacturers as well as to people. They don't have any special privileges. They're not held any deeper responsibilities than people. We -- we're treated alike, fair.

But we all have to use that standard of reasonable care, and it can come in many forms. I mean, it can be doing something that you would not want in a civilized society someone to do. It can be not doing that you would expect them to do. That's kind of vague, and I'm going to put some flesh on the bones about what it is that we maintain they didn't do and they did do that was negligent, that was wrong, and that led to Jean Connor's death.

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What did they do or what did they not do? Well, you've heard the word preemption, so let me introduce this. Everybody's jumping up and down in this case and using a word no one uses in the English language, preemption. Who knows what that is.

Well, there are federal laws which control what we do here, and by federal law, our claim for failure to warn or have a bad -- or have an improper package is limited to July -- up to all the time in history, up to July 1, 1969. Then a federal law cuts in and says, Because it was prescribed by congress you can't make the claim in a civil court in Florida.

So we can only make a claim legally up to July 1, '69, for failing to warn, but for a defective product or for other acts of negligence that are not failure to warn, that goes up until she stopped using the product, through '84. And it is a little bit tough to understand. I -- but none of us here in this courtroom created this mess, so we do the best we can.

So whenever I say failure to warn, I mean that by law we are required, and His Honor will instruct you, to limit our warning up to July 1, '69, but

not the rest of the claims, which include failure -- which include defective product.

Okay. So back to that. What did Reynolds do wrong? Why do I say their negligent? Because they -- they negligently failed to warn, because they did not label their product before of '69. They never labeled it. They never labeled it hazardous. They never labeled it -- they never told anybody what was in it. They never told anybody what tar and nicotine was in it even. They never gave anyone the idea -- any way to know what was in a Salem. Never gave any way to know at all.

They negligently marketed it. They put up beautiful charming pictures of people enjoying themselves when they knew at the same time that they were -- that those people were holding a keg of dynamite to the chromosomes of their cell. A very, very dangerous and lethal thing that they were playing around with in scenes that just look like it's the most wonderful thing to do. That's negligent marketing, you shouldn't be doing that.

And they also engaged in negligent design of their product because they specifically designed their product -- and we'll -- we've been into this a little and we'll show you again. They designed

their product for repeat business. How do you do that? You make sure there's the right amount of nicotine in it so that people will come back.

And we found their internal documents that show that they know what that line is and they were careful to stay above it, and that line is 1.0 to 1.3 milligrams of nicotine and that promotes addiction, or dependence, if you like, and that

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doesn't make people robots but it makes them buy your cigarettes again.

And when that happens you get a lot of regular customers but you also get a lot of customers who have what's called the addictive use pattern, and the addictive use pattern means you're smoking one or two or three packs a day, which means you're dosing your body with a fatal dose, or fatal not always, but 40 to 50 percent of regular users die prematurely from the use of their cigarettes once they get into that addictive pattern.

So it's really kind of a dead-end thing unless you can get out of it. And it's great if you can, and we'll talk about how she almost got out but it was too late. But anyway, they knew that when they designed it, so that was negligent. That's not the way you want people to behave in this country.

And they failed to use due care to protect the consumer, which is kind of a catchall thing, which is one of these human things, you know. Look at it and decide. Is that what you want? Do we want this in the country or not? Do we want this kind of conduct or not? In a way it's in our hands, I guess. We're a free country and it's in our hands, and civilization does advance.

And, you know, Mr. Crist, at the beginning of this trial, said, Well, it's a societal thing, you know, smoking is a societal thing, society approved of this. I guess the question is: Are we progressing perhaps? Are we -- are we moving? If society ever approved of it, and we suggest it never -- society, as a whole, never knew what was going on inside these companies, but we're certainly getting to the point where it is proper to -- to consider that whether or not this is the kind of civilized conduct we want. What kind of country do we want? What do we really want out of life? Another philosophical question, sorry, but that gets into this question of due care.

Okay. Next is legal cause, so I said negligence and then I said cause, and I've got to go faster, but what is legal cause? Legal cause

just means a substantial contributing factor. It doesn't mean the only cause.

Jean Connor died of lung cancer caused by cigarette smoke. Jean Connor also had a role in it. She was a person. She had to go out and buy the cigarettes, so we don't deny that Jean Connor was part of the cause. There's no question about that. I mean, otherwise she wouldn't have been a person.

So she was a -- she was a cause but the -- in the realistic sense of the word, Jean Connor died of lung cancer caused by cigarette smoke. It's also true, I suppose you could say, if she hadn't been born she wouldn't have died of lung cancer. Well, I agree. But if she hadn't smoked the Reynolds product she wouldn't have died of lung cancer, and that's the key to the case.

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That's where -- all the others are philosophical issues, but we're here to decide whether the Reynolds products were a substantial contributing cause.

There were no other carcinogenic exposures at all that anyone has identified. The criteria for causation has been met. Flip back to the clinical causation.

Dr. Feingold discussed this, it's never been refuted. She was exposed to a known carcinogen. She developed a primary cancer in the target organ, the lung. She was exposed to a dose known to cause disease, we know that, and she developed the cancer after a reasonable latency period of about 30 years. Those are the clinical causation requirements that are within reasonable medical probability.

Is it possible that something mysterious happened? Anyone's possible, but we're here on the civil standard of reasonable probability, and we think we've met it. In fact, I think we've met it much more than just reasonable probability.

Reynolds' cigarettes were the majority of cigarettes that she smoked. Now, she did smoke Benson & Hedges and she smoked -- she says that she stopped in '84, you heard the testimony. Her ex-husband now says he doesn't remember much but he thinks she stopped in '78. Well, I don't know what that is, I don't care.

The point is the majority of her exposure was to Reynolds. Her earlier exposure as a child was to Reynolds. Reynolds was what got her addicted. Reynolds was what broke her chromosomes and led to

her cancer. There isn't any real evidence to the contrary other than the throwaway about what date, and you can make up your own mind whether she knew what date she started or whether he did.

But the Benson & Hedges, we agree, that probably contributed. I think it did; I suggest that it did. I think all -- I suggest all nontrivial cigarette exposures probably contribute to cancer. I mean, maybe not one puff, but if you smoke a pack for a year, it's probably contributory. So we agree, Benson & Hedges was contributory, but that's not in this case.

And what we're here today on is Reynolds and whether Reynolds was -- is a contributing factor, and we think it's by far the largest. So it's not really, I think, that hard, but it's another formality we go through.

She had damage to her chromosome. A legal cause is not the only cause. And, remember, that if Jean Connor is partially the cause, and she is, it's a two-way street and R.J. Reynolds cannot or should not be able to just take its customers and say, It's all your fault, all your fault. We don't have any responsibility. You have it all.

Those customers are doing exactly what R.J.

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Reynolds intended and what they designed into the product, and so we suggest that that isn't what's being asked in this case.

Next. So I said first about failure to warn. Our claims of lack of warning are limited to 1969. So you say, Well, why should they have warned? Well, Dr. Feingold went through the medical literature and we spent a long time on it. I don't have the time to go through it again.

But, if you'll remember, there were some very important work that was done in 1941 by a gentleman named Paul Oschner, and there was some other work done by Wynder and Graham and by Doll and Hill. And Doll and Hill, in 1950, said that smoking has been established as an important factor in the causation of cancer of the lung.

By 1953 we had the famous painting of the mice. And by 1954 we had the huge study by Hammond and Horn, which resulted in those graphs that I showed you showing that almost all lung cancer were among smokers and very few were among nonsmokers, and I'll get do that in just a second. I always get ahead of myself.

But that information was out there for everybody, and in the face of it, it was uncaring

of the -- of Reynolds to not notify its customers. It was uncaring. That kind of information cannot be ignored.

You can't just hope that it will filter in by -- through Reader's Digest. Your obligation as a manufacturer is to alert your customers in a serious way and not to just hope for the best and hope that they hear and don't care how old they are but hope that it filters in somehow, or not hope, as Reynolds' case, they didn't hope that they heard.

They took out ads, The Frank Statement, which says we don't think it's harmful. So not only were they not hoping that the information would filter in, they were actually trying to keep that information out. So instead of warning, they were like antiwarning. They were warning the wrong way. They were pushing and saying, No, no, it's not true. Mr. Motley will go into this big push, this big cover-up to say, No, no, no, to tell the public it's not true, it's not true, which had who knows how much effect. Lots.

So beyond this, we have internal documents from Reynolds which have their own scientists discussing and approving of the medical literature,

so there's no issue that they didn't know and I'll prove that in just a second.

Next. This is -- how much time have I used?

MS. STEIGER: Almost half.

MR. WILNER: Oh, God. 10 percent done.

THE COURT: 31 minutes.

MR. WILNER: All right. 10 percent done and almost -- my time is -- well, never mind. Quality

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time they say, right?
The -- all right. This is what we've seen before, Dr. Feingold talked about it, and this is a real illustration of failure to care. This is an epidemic. This is an epidemic of which Jean Connor was part, it is said that she was. These are -- this curve looks like a clinical curve, it looks just like a -- like something that you'd -- you draw, it doesn't look that bad, but these are -- this curve is built upon the deaths of people in the United States.
This happens to be males; they got it first. They got the disease first because they started to smoke first. It turned out that it was a very egalitarian disease. It turned out that despite what the cigarette companies were saying in some of their early literature that, Oh, it's limited to

men and that's why it isn't caused by cigarettes, unh-unh.
No, the carcinogens in cigarettes don't -- don't discriminate. They -- they hit the genes inside the lung of women just as fast as they hit the men, and when they hit them and they make the wrong change, it doesn't take much.
You know, I digress just a minute while we look at this, but Reynolds put up some charts to say that there wasn't enough carcinogens in their product. They talked about nanograms and there's just not enough, there's just not enough.
Well, first of all, something's doing this, and it's cigarettes. We'll prove that there's nothing else, air pollution, nothing else that's material to this. So there is enough and we know that from stepping back.
If you saw that happening to people in your town, they were getting, let's say, cancer of the stomach from drinking of a reservoir and all of a sudden it started to look like that, you wouldn't say, Well, it must not be enough. You'd scream and say, Oh, my God, this is a disaster. These poor people are dying. We must stop it. We must stop it.

But instead, the cigarette -- Reynolds debated, argued, generated controversy, created doubt, tried to argue around it and say, Well, it may be -- you know, it could be, maybe not that, maybe it's not, would somebody please tell us what it is. Missed the whole point.
The point was that the way they put the nicotine in the product, the way the -- they sent the product out with the nicotine level to get the repeat customers, they knew that they were dosing people with this -- what they call the satanic mix of carcinogens, which included BaP, which we've talked about before, benzo(a)pyrene, and some other of the deadly ones.
And I'll talk in a minute about what they say they did to try and get it out, but whatever they did, they didn't do a heck of a good job because

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this thing has climbed.
And this little tail at the end, very interesting. It's a reduction in smoking rates among men that occurred about 20 years ago, and that's great. I mean -- I mean, you know, that -- that's the best we got right now, right there.
Let's look at the females, please. This is not so good because, you see, it's delayed in time,

it happened later, and when it turned the corner, boy, it really started to climb.
You know, I think the world -- I suggest to you the world is really divided into two people on these -- on cigarette issues. It's the ones who really look at this chart and understand it, and throw up their hands, you know, in dismay, disgust, and the ones who haven't seen it. Because this is really -- there's no other chart. There's no other disease or cancer that is -- that has ever done that.
And it's new. This idea that tobacco's been with us forever and all that, well, it was not inhalable tobacco in the form of a Salem cigarette. It's stuff way back here, and there wasn't any lung cancer. And then all of a sudden, to catch up, 30 years after consumption, boom, and this hasn't turned down, it's still going up. And Jean Connor belongs in here as a statistic now, as a person she was at one time, now she's a statistic. Part of this curve, keep going up and up.
So I guess Reynolds would have us believe that all these people did it, they're all the cause, they all did it to themselves. Something happened,

people must have changed, because back here we had the same kind of people in the country.
I mean, people -- their genetic makeups haven't changed. People are people. Why back here didn't all these people die? It was something that was added, not to the water supply, but to the air supply, even worse. It was something that was added to the air supply and it was the wrong thing, it was a bad thing. These aren't bad people. These are just poor people who suffered and died. They had a bad thing added to their air supply and they became statistics and it's sad.
Next. Oh, by the way, if anyone wants to know, the increase in cancer among women is -- is solely in smokers. Here's the -- here's the rate among nonsmokers, here's the rate in smokers, and whatever's causing it among nonsmokers is not -- and there are -- we're not saying there's no cases in nonsmokers, that's silly.
There are cases of everything. If you look through medical books far enough, you'll find a case of anything, but that's not the point. There are a few cases in nonsmokers, but look at what's happened. That's -- Jean Connor belongs there, right there, right in there.

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Next. And this is what cigarette consumption has looked like over the years and it peaked right around here, right in 1960, well after supposedly everybody knew. And hopefully it is -- it is going down and the publication of all these public reports and things is wonderful because without those this would probably keep going up. Certainly nothing the cigarette industry did every turned this around.

Next. I'm going to speed up, and I apologize, my voice probably is going to go. And remember this, this was published in 1958, it was data from 1954. It is never been refuted. And all the people who breathe bad air, all the people who have bad genes, whatever you want to call them, have to be lumped into there and for some reason they never get lung cancer, and all these people who smoke two packs a day do.

This was noticed to R.J. Reynolds in 1954. This should have been on every package of cigarettes just like this. This should have been actually told to people. It you should have been broadcast more. It should have been on the packs.

Next. And this is what happened when you smoke early. This is Jean Connor. Much worse than

if you wait until you're 25. There's a nonsmoker.

Next. This is what happens if you live in cities and towns, no big deal. Those are the smokers. She lived in the city, she's there. These are the nonsmokers.

Next. Reynolds had actual knowledge that its products were dangerous, hazardous. You've seen the 1953 memorandum from Claude Teague. This is it. Survey of Cancer Research, Possible Emphasis -- Emphasis upon Carcinogens from Tobacco, 1953, Claude Teague. You'll have a chance to read the whole thing and I can't do it here because I don't have time.

But he's got all these carcinogens labeled, and then he talks about Oschner and DeBakey, that's one we talked about. Oschner and DeBakey. So the 1941 reference is cited in this paper. And then he talks about the American Cancer Society, that's the one we just saw, that was the Hammond and Horn, and it says when that comes in, it's going to settle things. This was '53, it came in in '54. It should have settled things, but it didn't, it didn't because the cigarette industry -- R.J. Reynolds made a different decision.

Instead of saying, Okay, we accept it, Hammond

and Horn came in, nobody is a nonsmoker gets it, everybody who smoked -- instead of saying, Okay, okay, let's get the word out, let's get this product fixed up, let's fess up, instead of that they take -- they took the opposite approach, which was take out The Frank Statement to cigarette users, deny it, say that it doesn't happen and keep fighting this -- this battle of keeping people off

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guard. Don't tell them what's in the cigarettes, don't admit to anything. And its lasted up until today, even today.

We don't know what's in them. I don't know if their dangerous, says their chief designer, I don't know. So it's more of the same. And Mr. Motley will talk more about that.

But here's what he says, goes through all these studies and says at the end, It's recommended that all -- that additives be -- be examined carefully with respect to their possible roles as carcinogens. In view of the facts presented in this report, it's recommended that management take cognizance of the problem and its implications to our injury -- I'm sorry, to our industry. That positive research action be planned and initiated without delay. So he said a red flag.

Rodgman '59. Real fast. In '59, Dr. Rodgman, another one of their researchers, says -- talks about -- in 1954 the first report of carcinogenic polycyclic hydrocarbons in cigarette smoke was published, in cigarette smoke. Since then 60 similar compounds, and he goes on to say that there's a distinct possibility these substances would have a carcinogenic effect on the human respiratory system.

Medical experience has shown that man responds to various chemical substances in the same manner as experimental animals. It follows, therefore, it would be better for the consumer if cigarette smoke from devoid of such components.

Reynolds never tells anyone about that or its consumers. Why didn't it tell its consumers that it would be better for them without any of these components? Simple answer, these answers are simple. The answer is it's bad for business. It's terrible for business to tell people that what they're going to smoke is going to kill them. It's much better for business. Mum is the word.

The 1962 Rodgman document we talked about a lot and I urge to you read it. I won't have time to read it now.

So what happened on the warning field? Years of silence. No warnings at all until 1966. Silence.

Turn the page over for a second. These were the warnings pre '66. No, no. These were the warnings pre -- no. It's a joke. These were the warnings pre '66. I'm sorry to play a joke on you. These were the warnings, blank screen, blank. Not blank inside the company but blank on the package pre '66, nothing. And, they say, Oh, but everybody knew. Well, Mr. Motley will talk about everybody knew.

But I'm talking about what they did and what their responsibility is and what their personal responsibility is, not what Reader's Digest might have done, but why didn't they do it?

1966. Go to the '66 warning. You're not

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going to trust me anymore. Caution, cigarette smoking may be hazardous. The most -- the classic understatement of the world. At that time what did they know? They knew that it was causing cancer. Cancer of the lung is curable in 5 percent of the cases; in 95 percent of the cases it does what it did to this poor lady Jean Connor.

So careless were they that they said -- even

in 1966, after all this time, only maybe, when really what should they have said? Skip over to danger. I'll put the color one on. I'm going to go another ten.

Why not this? What's wrong with that? Why not that? You know, people are cynical, they say, Oh, you know, come on, you can warn people, they're not going to do any different.

Well, I don't see children drinking rat poison when it has that on it. So you say, Oh, but that's different, Mr. Wilner. They drink rat poison -- I mean, they don't drink rat poison not because there's a warning but because it's not cool to drink rat poison but it's cool to smoke cigarettes, to which we say, Who made it cool? Who made it cool to smoke poison?

Now, it's true, this is a big industry and this is something that's worked its way into our culture, but if you step back, you know, sometimes you apply the Martian test, may not sound so good, but it's true. What if you just arrived on this planet and didn't -- you know, hadn't seen all this all your life and just were asked, Well, let's look at some things an planet earth, what would you -- think about it.

Well, one of the things you'd say is, my God, 40 to 50 percent of these people dying and it's cool and there's all these images and they do it and they go outside buildings and do it in the rain, well, how bazaar this is.

Two answers, made it cool, put the chemical in there that gets you downstairs in the rain. Certainly not because you love the smell of the smoke and your nostrils when it's freezing cold outside and it's raining and it's time to go back upstairs. Definitely a chemical thing, probably can't go into that in depth.

But I'll show you another one. Why didn't they do this? How would you like to have that on every package of cigarettes in 1969? I think it would have been a good idea. And, you know, if you say, Look, what if your mother tells you to stop and you don't? I say, Wouldn't it be great if Mom had that. Wouldn't it be great if instead of just, well, I heard, that was everywhere. It would have changed the culture. Fessing up would change the culture.

And then they say, Well, nobody believes the cigarette industry. Well, that's because look at what they say. If they told the truth, people

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would believe them. If that came on the product in '6- -- before '69, people would believe cigarette industry, as they should. That had to be there.

One more. And Jean Connor was a good kid and she wouldn't have drank poison. Danger, due not inhale. Zoom it out a little bit.

MS. STEIGER: That's as far as it goes.

MR. WILNER: Oh, I'm sorry. Don't inhale. We don't think you should inhale, it's a cancer hazard. An industrial warning.

Next. Negligent marketing. It's wrong to sell a poisonous product as if it were a product of springtime. It is wrong. It means you don't care. It means you want your profits more than you want to tell your people.

Here's my point. If -- if they -- look at the effort that went into promoting the product pre '69, that's what we're limited to right this second. Look at the effort that went into promoting the product. Look at all this imagery. Look at how -- how it appeals to people in different parts -- you know, it's not just telling somebody something, it's making them feel something. That's the power of suggestive imagery in advertising and it's very powerful.

Well, here's my question: Why wasn't the warning taken as seriously as the promotion? And the answer is profit, of course. Can't do that, people wouldn't buy it.

It's one thing to tell somebody or to have them hear it, This may be dangerous. If you told a teenager, Driving may be dangerous if you go too fast, that's important but it's not enough. So what do we do when we really want to tell drivers that it's dangerous to drive? We sit them down and run these drunk driver films which show horrible crashes, bam, crash, boom, everybody, awful stuff. And even the cynical kids remember that for their whole lives, you know, they remember it.

I'm not saying it makes everybody into a good driver. You can't argue absolutes in the world. Saying that that kind of approach, to be serious about information and warning, not just tell them, Oh, it may -- you may get in a wreck, but, boom, look, remember, don't forget, that's serious.

So if you are the manufacturer -- if one is the manufacturer and you're selling a product that is so lethal -- that you know inside your own company is lethal, irreversible changes in people's chromosomes, tiny amounts of these carcinogens, so

small that we can't measure them are enough to affect these chromosomes because they -- they come in very small packages and all it takes is a wrong hit and a terrible thing happens to your body and you end up with cancer and you end up dying from a very, very, small amount of these powerful carcinogens. And they're in that package, they're in it as we speak.

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Somebody might have died using that product that's on the -- on that -- that's shown right there, and that's wrong. They should have taken their responsibility much more seriously.

I'm going to take three more minutes. I have to talk about two more things. Product defect and I have to talk about the -- I'll just talk about product.

A product is defective, and His Honor -- this isn't the instruction, His Honor will give it to you, this was the best I could do in two minutes.

If it doesn't perform as a reasonable person would expect or if its risk its -- it should read, Its risk exceeds its utility; I couldn't type last night. Risk -- and that's complicated. What do you mean, risk utility? What do you mean by this and that?

The point is, a defect does not have to be I opened the package and I found one of the cigarettes was crooked. That's not -- what we're talking about is a defect in the way they planned the cigarettes to be. A defect in design. What is our defect in design?

Next, defect. Here's the point that I wish to make about why cigarettes are defective, why Salem was defective. There are two things that make a cigarette and the Salem cigarette a bad product; one, it has a dangerous level of nicotine, which promotes addiction, and the addiction, as we've said before, is not a robot addiction, but it affects people's consumption, pushes them into a two-pack-a-day or one-pack-a-day addiction habit, call it what you want, it's an addictive use pattern.

But you say, Mr. Wilner, not everybody does that. We agree. Jean Connor was one of those people affected strongly by nicotine dependence. Not everyone is. The stronger your nicotine dependence, the more information you need to get out of this trap. The stronger your nicotine dependence, the more support you need from others. The stronger your nicotine dependence, the more

help you need.

If your nicotine dependence isn't that strong, maybe you can just walk away. People are different. The amount of nicotine you've taken into your body over your lifetime, the amount of change it's done to your brain, all these things affect how hard it is to tear yourself away from this stuff. And we're not saying that nobody can, but what we are saying is that it influences.

And it's got to be weighed against the other influences, which with all this advertising coming into Jean Connor, was certainly not possible.

But anyway, the defect is a dangerous level of nicotine promotes an addictive use pattern. Why do I say that was designed in? Remember the document I read yesterday said exactly that, for presmokers and learners, the nicotine is awkward and

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unpleasant. That's tolerance, one of the types -- one of the things in addiction that Dr. Feingold talked about. But later it becomes the primary reinforce, and that was Dr. Teague, 1973, the document I read yesterday.

So they know and they kept the nicotine at 1.0 to 1.3, up and down a little bit, but always maintaining the proper amount of nicotine in the

Salem 85. Why? Because it's repeat business.

Now, Dr. Townsend says customer acceptance. That's a -- that is a -- a code word. That means sales, and there's no harm in sales, but you can't just say the --

(Pause.)

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